

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Charles Marich

v.

Case No. 04-cv-334-PB

Western Carpet & Linoleum Co.
of New England

NOTICE OF RULING

**Re: Document No. 52, Motion for Disclosure of
Additional Affidavit in Support of Objection
to Motions for Summary Judgment**

Ruling: I deny the motion for two independent reasons. First, the plaintiff has failed to justify his failure to produce the affidavit with his objection to defendant's summary judgement motion. Plaintiff did not make any attempt to locate the witness until more than a month after the defendant filed its summary judgement motion and less than two weeks before his objection to the motion was due. This delay is inexcusable and warrants the denial of the motion. The motion is also denied because it is futile. The only potentially relevant information contained in the affidavit is inadmissible hearsay. Statements attributed to Mr. Hemming were not made within the scope of his employment and therefore are not admissible under Fed. R. Evid. 801(d)(2)(D).

The clerk shall set a date for the completion of the hearing on the summary judgement motion.

Date: February 17, 2006

cc: Leslie Johnson, Esq.
Todd Reed, Esq.
Allison Romantz, Esq.
Mark Whitney, Esq.